

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

HOWELL DEAN O'BRYAN, JR.,

Petitioner,

vs.

J. W. COX, in his capacity as
Warden of Yankton Federal Prison Camp,

Respondent.

CIV 21-4052

ORDER

In the pleadings in this case it is stated that Petitioner is supposed to complete a college credit program on or about August 9, 2021. It was also stated that if that program was successfully completed and subject to other limitations such as no disciplinary infractions, the Petitioner would receive another (12 1/2) days of time credit. The Bureau of Prisons would determine whether the time credits would be used for pre-release custody or supervised release. Whether it be pre-release custody or supervised release is an individual adjudicative decision not subject to judicial review as opposed to a rulemaking decision which is subject to judicial review. 18 U.S.C. § 3265; *See also*, *Martin v. Gerlinski*, 133 F.3d 1076, 1079 (8th Cir. 1998).

The Court wishes to know whether or not the Petitioner successfully completed the college program and, if so, whether he has been or when will be awarded the additional 12 1/2 days of time credit.

Respondent has stated that O'Bryan has a projected release date of February 23, 2022 via a good conduct time release. (Doc. 15, p.2). An affidavit from a Unit Manager at the Yankton Federal Prison Camp established that Petitioner completed his Residential Drug Abuse Program (RDAP) in 2020 and he has completed 500 hours of programming for this EBRR program (Doc. 16) that entitles Petitioner to 31.25 days of time credit. (Doc. 28). From many other drug cases, the Court

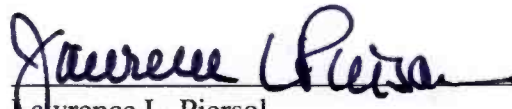
is aware that for successful completion of the RDAP program, an inmate can receive up to a year of time credit and this also involves completion of 120 days in a residential reentry center (halfway house). The Court wishes to know whether the 31.25 days of time credit under the EBRR program is in addition to any other time credits for completing RDAP, or is the 31.25 days of credit the only time credit that Petitioner receives for successful RDAP completion? Or, if there is other RDAP credit other than the 31.25 days time credit, has that other RDAP credit already been included in the projected release date?

The Court would appreciate as prompt a response as possible from the parties as these questions deal with issues not fully developed at oral argument.

IT IS SO ORDERED.

Dated this 9th day of August, 2021.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
MATTHEW W. THELEN, Clerk